

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2004-135
Docket No. 2002-682

VERIZON MAINE
Petition for Consolidated Arbitration

July 15, 2004

VERIZON-MAINE
Proposed Schedules, Terms,
Conditions and Rates for Unbundled
Network Elements and Interconnection
(PUC 20) and Resold Services (PUC 21)

PROCEDURAL ORDER

I. BACKGROUND

On June 15, 2004, I issued a Procedural Order which supplemented the Commission's June 11, 2004 Order in Docket No. 2004-135 which consolidated the Commission's Wholesale Tariff proceeding with the Verizon Arbitration proceeding. The Procedural Order noted that the Commission had directed the parties to develop a consolidated list of issues that must be litigated and established a deadline of July 16, 2004, for filing of the list. The Procedural Order also directed Verizon to take the lead in setting up the first meeting to develop the consolidated issues list.

On July 12, 2004, only four days before the July 16th deadline, Verizon filed a letter with the Commission stating that Verizon had not taken any steps to set a meeting of all parties and that Verizon was requesting a 30-day extension. Verizon pointed to the ongoing litigation relating to the FCC's *Triennial Review Order (TRO)* and the expected interim rules from the FCC as reasons for the delay. Verizon also asserted that no party would be prejudiced because Verizon had committed to provide CLECs with 90-days' notice of any discontinuation of unbundled network elements (UNEs). In addition, Verizon proposed to file a revised *TRO* Amendment for CLEC interconnection agreements which will require additional time for CLEC review and development of additional lists of issues. It is unclear from Verizon's filing, whether the process it envisions allows for face-to-face meeting between Verizon and the CLECs.

On July 13, 2004, the CLEC Coalition (Mid-Maine Communications, Inc., Oxford Networks, Revolution Networks, and Pine Tree Networks) filed a letter in opposition to Verizon's request for an extension. The CLEC Coalition argues that Verizon's focus on the *TRO*-related issues ignored important issues concerning unbundling pursuant state law and that further delay on those issues would undermine the CLECs' ability to have its concerns addressed by the Commission. Thus, the CLEC Coalition strenuously objected to any delay and requested that Verizon circulate its new *TRO* Amendment immediately so that CLECs can review it before July 16th. On July 14, 2004, GWI and Cornerstone Communications (Cornerstone) also filed letters also in opposition to Verizon's request. GWI contended that there are a number of important issues to

resolve and that, contrary to assertions made in its Request, Verizon is already taking steps to implement certain provisions of the *TRO*. Cornerstone did not object to a modest delay in the schedule but felt strongly that there were many non-*TRO* issues that needed to be addressed.

II. DECISION

We recognize that there remains a great deal of uncertainty concerning the legal standards that will be applied to the issues associated with the wholesale tariff and the arbitration. We also recognize that the FCC will soon issue interim wholesale rules which likely will lead to yet another round of disagreement and further uncertainty. As the Commission said in its June 11th Order in the Arbitration proceeding, however, if we waited for the uncertainty to subside, we would never make any progress in addressing the myriad of issues that require resolution. We agree with the CLEC Coalition that there are a number of issues associated with the wholesale tariff proceeding which are not necessarily tied to the *TRO* interpretation and that additional delay will not provide any further clarity. We are also concerned that the longer issues are left unresolved, the greater the potential for crisis when the *TRO* and new FCC rules are implemented.

We continue to believe that it is the responsibility of the parties, and not the Commission, to develop a list of issues that needs to be litigated. We do not expect this list to be set in stone but do expect that all parties will expend the necessary resources to develop the list. We also believe that face-to-face meetings between the parties will facilitate the narrowing of the issues. Nobody is served when parties submit exhaustive lists of positions and then rely upon the Commission to try to parse through the rhetoric to uncover the important matters and prioritize them. What needs to occur instead is good faith, face-to-face negotiations where both sides recognize that they cannot prevail on all issues and where both sides make concessions and get some issues off the table. Such a process will ensure that the Commission's attention is focused on the most important matters.

It is apparent that such discussions will not take place unless the Commission mandates the occasion and sets the schedule. Therefore, we revise the schedule for this proceeding as follows:

July 16, 2004	Verizon files its revised <i>TRO</i> Amendment
July 23, 2004	Examiner's Report on Preliminary Legal Issues
July 30, 2004	Exchange of issues lists between parties (both Verizon and the CLECs should attempt to identify ALL potential issues between them)
August 6, 2004	Exceptions due on Examiner's Report
August 12, 2004	Deliberation of Examiner's Report
August 19-20, 2004	Negotiations (PUC Hearing Room, 8:30-5:00)

Due to the large number of parties involved, motions to change the schedule will not be granted lightly. Any such motion must be filed at least a week in advance of the deadline for the extension is requested.

BY ORDER OF THE HEARING EXAMINER

Trina M. Bragdon